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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 468 (RMB)
Remote Telephone Conference

5 ROBERT HADDEN,

6 Defendant.

7
8
9 New York, N.Y.
September 17, 2020
10:00 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS,
16 Acting United States Attorney for the
Southern District of New York

17 MAURENE R. COMEY

JESSICA R. LONERGAN

LARA POMERANTZ

18 Assistant United States Attorneys

19 WAYNE GOSNELL

ISABELLE KIRSHNER

20 Attorneys for Defendant

21 ALSO PRESENT: JOHN MOSCATO, Pretrial Services

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(The Court and all parties appearing telephonically)

THE COURT: You tell me who we have on the line.

THE DEPUTY CLERK: Sure. We have a number of people on the line and not all of whom are identified. However, we have from the U.S. Attorney's Office AUSAs Maurene Comey, Jessica Lonergan, and Lara Pomerantz. And Ms. Lonergan will do most of the speaking this morning.

On the defense side, we have Mr. Hadden, we have Isabelle Kirshner. We have Wayne Gosnell. And Ms. Kirshner will be doing most of the speaking for the defense.

We also have U.S. Pretrial Services Officer John Moscato.

And we have the court reporter, Karen Gorlaski.

THE COURT: So, we're set to go?

THE DEPUTY CLERK: We are set to go, Judge. I have not asked others who have joined the call to identify themselves unless you want me to.

THE COURT: No. That's fine. The conference today is open to the public and the press and just yesterday I put out a notification order and also requested that the government advise those persons who are -- have identified themselves as victims in this case so that they can sit in on today's conference and perhaps participate. I did read the transcript from the bail proceeding and arraignment before the magistrate judge and I certainly noticed that the -- several victims had

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1 participated in that proceeding as is appropriate and if there
2 are any participating today they are most welcome in this
3 proceeding.

4 Ms. Comey, the victims have received notification from
5 me and/or you?

6 MS. LONERGAN: Your Honor, this is Jessica Lonergan.

7 THE COURT: OK, Jessica, go ahead.

8 MS. LONERGAN: My apologies for speaking over my
9 colleague.

10 Yes. We -- upon receiving the Court's directive
11 yesterday and actually prior to that as well we circulated the
12 dial-in information for this conference to the victims through
13 a variety of methods, through counsel, through the FBI. We
14 provided the number to our victim witness coordinator and we've
15 also asked it to be posted on a web page about the case. So
16 we've made efforts to make sure that the victims know how to
17 participate in today's conference should they wish.

18 THE COURT: OK. So I think then we can get started
19 from my point of view.

20 First, let me say that if you are not speaking, which
21 is going to be most of you and most of the time, it's usually
22 helpful if you mute your phone so we don't have any background
23 noise, number one.

24 And also, if you are speaking, please identify
25 yourself at the outset before your comments begin so that the

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1 court reporter can know exactly who is talking.

2 Let me say this at the outset, and I do this as a
3 matter of course in criminal cases, and that is the following.
4 Everybody should be aware, particularly the defense and the
5 government, that nothing that we say during the course of
6 today's conference and probably subsequent conferences as well,
7 nothing is intended or, in fact, accomplishes the diminution of
8 defendant's presumed innocence; that is to say, no matter what
9 we say, the cardinal rule in a criminal case is that a
10 defendant is innocent until proven guilty typically by a jury
11 or if there's some other consensual disposition. That's it.
12 So that -- and I'm very much aware of this presumption of
13 innocence and will do everything I can to make sure that it is
14 maintained.

15 Second, I want to mention, which we've already done,
16 that I'm aware -- I'm familiar with the case in the sense that
17 I have read through the transcript of the proceedings before
18 the magistrate judge and, of course, I've read the indictment
19 and any other papers that have been submitted to me. As you'll
20 see in a short -- in short order, there are some gaps that I'm
21 not clear about and I'm probably going to ask some of you to
22 help fill me in on background.

23 So, without any further remarks, I'd like to, number
24 one, find out where the bond and the bail conditions that were
25 established by the magistrate judge stand. I noticed he set a

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1 deadline of September 19. That's literally right around the
2 corner. So perhaps defense counsel can enlighten me on that.

3 MS. KIRSHNER: Yes. Good morning, your Honor. This
4 is Isabelle Kirshner. How are you?

5 THE COURT: How are you?

6 MS. KIRSHNER: Good. Last saw each other in March so
7 I hope you're well.

8 As your Honor -- I'm glad that you had a chance to
9 review the minutes of the bail proceeding and let me tell you
10 where we are.

11 Mr. Hadden's home. We're in the process of putting
12 the home up to secure the bond and, obviously, both he and his
13 wife are prepared to sign the bond.

14 Unfortunately, we've had a very difficult time in
15 terms of finding other suretors and both Mr. Gosnell and I have
16 spoken to prospective suretors who are financially responsible
17 and would under other circumstances be prepared to signed a
18 bond. What we have found is that given the publicity that has
19 been attendant to this case and the nature of the charges,
20 people who normally would have signed the bond are very
21 concerned about having their names publicly associated with
22 this matter. One is a middle school teacher. One is a real
23 estate broker. And that has been the challenge.

24 And so I'm -- this is an issue we were going to bring
25 to the Court's attention. Obviously, from our perspective the

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1 most important part of the bail package is that he is prepared
2 to put the home that he lives in with his wife and disabled
3 child up to secure the bond. And I'm going to have to ask the
4 Court -- I will ask the Court to find those conditions
5 satisfactory. We're just simply not able to find other people.
6 Each one of the people we've spoken to have been one hundred
7 percent confident that he's not going to flee and one hundred
8 percent confident that he would abide by the conditions of the
9 bond. They just felt it was in their own family's best
10 interests, one being a school teacher and, again, one being a
11 real estate broker, that their names not be affiliated with a
12 case that has such a high profile with these kinds of
13 allegations.

14 THE COURT: Well, so you know I understand, I guess,
15 the feeling of those people. But it doesn't further the
16 proceeding or the case unless they sign the bond.

17 Have Mr. and Mrs. Hadden signed the bond?

18 MS. KIRSHNER: They have not. We had hoped to have
19 sort of everybody available but we could certainly do that
20 today.

21 THE COURT: Well, I think that should be done
22 immediately. I thought I remembered that the magistrate
23 judge --

24 MS. KIRSHNER: I'm sorry. Mr. Hadden signed the bond
25 before he left.

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1 THE COURT: Yes. So then Mrs. Hadden is going to sign
2 the bond ASAP like today, right?

3 MS. KIRSHNER: Right. I mean my understanding all of
4 this can be done electronically and we'll make sure we get that
5 done today. I just wanted to make sure that that was, quite
6 frankly, it would be OK.

7 THE COURT: I'm thinking about that. You know,
8 there's a reason that responsible people are called for and
9 it's a little disappointing that -- didn't seem to be a problem
10 when I read the transcript.

11 Does the government have any position with respect to
12 signatories to the bond?

13 MS. LONERGAN: Yes, your Honor. This is Jessica
14 Lonergan.

15 The first thing I want to mention is that Mr. Hadden's
16 wife has not yet been interviewed by my office. We have been
17 waiting for some sort of communication from defense counsel.
18 She will have to be interviewed before she can sign the bond
19 and we will make all efforts to have somebody available today
20 but that's a step that has to be taken before she can sign.

21 Secondly, for the reasons that we argued at the
22 initial conference before the magistrate judge, we believe that
23 Mr. Hadden is a flight risk. We know that the magistrate judge
24 felt that there were conditions that could be set but one of
25 the important aspects of those conditions were suretors outside

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1 of Mr. Hadden and his wife because Mr. Hadden has to post his
2 home and we understand that he has family obligations. But if
3 he posts his home and then only he and his wife sign, they
4 could -- in some sense it's only a familial obligation at that
5 point, both the bond and -- and we think it's very important
6 that someone outside of Mr. Hadden's own family essentially be
7 on the hook should Mr. Hadden decide not to come to court. And
8 it is unfortunate that the folks that defense counsel has
9 contacted to date have been unwilling to sign the bond but we
10 continue to believe that having at least one, the magistrate
11 judge required two, but at least one suretor who is not a
12 member of Mr. Hadden's family, we think that that is critical
13 to ensuring that he will return to court.

14 MS. KIRSHNER: Your Honor, may I make -- this is
15 Isabelle Kirshner again.

16 If we could have maybe some provision where the court
17 and the government would of course know the name of the
18 suretors but that their names would not be published, I think
19 we might be able to address this issue.

20 THE COURT: So that's an interesting suggestion and I
21 haven't had a situation like that in the past but my gut
22 reaction I would like, Ms. Kirshner, if you send me a letter
23 today outlining that and we'll give the government until
24 tomorrow to respond on that issue. I don't have any visceral
25 reaction. I do think, as the government points out, that it is

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1 a very significant aspect of the bail that there be third
2 parties on that bond. That's my feeling. I think it's not a
3 bad suggestion. But I have to think about it and I would like
4 you to send me a letter today asking for that arrangement if
5 that's what you want to do.

6 MS. KIRSHNER: OK. Thank you, Judge.

7 THE COURT: And we'll give the government until noon
8 tomorrow to respond.

9 MS. LONERGAN: That's fine, your Honor.

10 THE COURT: You know, if you two want to meet and
11 confer and if there's consensus, you can send me a letter that
12 says that both sides agree that that is doable.

13 MS. KIRSHNER: OK. We'll talk to each other after the
14 conference, Judge.

15 THE COURT: I would like to wrap this issue up quickly
16 and get -- make sure that all the conditions that were set by
17 the magistrate are implemented.

18 So I'm going to come --

19 MS. KIRSHNER: Thank you, Judge.

20 THE COURT: I'm going to come back to those conditions
21 in a minute. And with respect to my role at this juncture in
22 ensuring that the bail conditions are satisfied is 18 U.S.C. §
23 3142, I believe it's (c)(3) which, of course, gives the
24 judicial officer the authority to amend the conditions of
25 release and to change them if circumstances warrant.

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1 So I'm going to come back to the specific other
2 conditions of the bond in one minute.

3 Here are some other preliminary questions that I had.
4 I was reading the papers. I know that the defendant,
5 Mr. Hadden, of course, is -- has been a physician. I
6 understand from the papers that he's retired. But I'm
7 wondering, and I don't know the answer to this. Does he still
8 hold an active medical license? Is he still Dr. Hadden or how
9 does that work?

10 MS. KIRSHNER: No, Judge. Your Honor, as a result of
11 the conviction in the state he forfeited his license. He
12 hasn't practiced medicine since 2012.

13 THE COURT: The next question I have does relate to
14 that former conviction. I don't quite understand what happened
15 there. From the transcript, it appears that he was indicted by
16 New York state, by the district attorney in Manhattan. There
17 are sort of two proceedings, one even before that. But let's
18 talk about the indictment that did lead to a conviction.

19 It seems as if there was a sentence or an agreement
20 that there be no jail time. I assume, from what I've read
21 briefly, it isn't discussed in depth, that there was some sort
22 of prosecutorial issue, perhaps a *Brady* violation, which
23 resulted in -- that there was no jail time, a so-called
24 conditional discharge. But I would like to know more about
25 that and what I was thinking in particular was there must be a

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1 transcript of the plea proceeding, because there was a plea in
2 that instance, and also of the sentencing transcript.

3 So I would hear briefly from you on that subject but
4 if nobody minds if I could take a look at both the plea and the
5 sentencing, that would be helpful.

6 MS. KIRSHNER: OK, Judge. What I think -- I think the
7 reason why this -- and having read the transcript to
8 understand, the reason why it was relevant for the -- I'm
9 sorry. This is Isabelle Kirshner again.

10 The reason why this was relevant, obviously, for the
11 bail hearing was because of -- I was addressing the
12 government's assertion of risk of flight. But let me go back a
13 little bit further because there was a little bit of strange
14 procedural history in this case that caused it to go on for a
15 longer --

16 THE COURT: I think you alluded to it, something to
17 suggest --

18 MS. KIRSHNER: Let me go back to sort of the
19 beginning. I believe it was -- don't hold me a hundred percent
20 to the dates because as I've been living with this matter for a
21 long time. I'm not a hundred percent certain of them. In the
22 summer of, I think it was 2012, there was an allegation that
23 Dr. Hadden had abused a patient and that was a patient who
24 actually spoke at the bail proceeding. And she had gone to the
25 police, called the police. I did not represent him at the time

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1 that he was arrested. But there was a decision made -- there
2 was a DNA analysis done as a result of that complaint and there
3 was a decision to sort of arrest and then void that arrest. I
4 remember it's 2012 because I remember that it was around
5 hurricane Sandy and I was, frankly, secretly hoping that
6 evidence had gotten washed away.

7 But what had happened was that the DNA results were
8 not only not conclusive but may have pointed to the fact that
9 there were other donors that was found in the victim.

10 A period of about two years went on before Mr. Hadden
11 was indicted in the state. But during that two-year period,
12 there were a number of civil lawsuits that were brought that
13 included some of the state -- ultimately the state's victims
14 and some other people and I don't know whether any of those
15 initial plaintiffs are the victims in this case.

16 But that case -- I believe it was in June of 2014
17 Dr. Hadden was indicted. That case commenced. We had a great
18 deal of litigation. And in the state proceeding, as the Court
19 may know, it's not dissimilar to 404(b) material but it's
20 something called the *Molineux* hearing. And the state attempted
21 to introduce the testimony -- I don't know, Wayne -- I think
22 fifteen additional witnesses or something like that. And we
23 did a great deal of litigation in connection with that case.

24 We also, obviously, did all the other things that we
25 were supposed to do. And in connection with that -- what

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1 happened was after the initial arrest and void of arrest,
2 Columbia Presbyterian issued a directive that Dr. Hadden not be
3 in the presence of any patient without a chaperone the entire
4 time. And I think that period where he was continuing to
5 practice but with the presence of a chaperone the entire time
6 didn't last that long, it was a couple of weeks or a month or
7 whatever. And then he was -- then he became retired.

8 THE COURT: This is what year?

9 MS. KIRSHNER: I think 2012. Because he was arrested
10 and unarrested. Columbia said he can't see a patient without a
11 chaperone. And so that postarrest/unarrest chaperone period I
12 believe only lasted like a month or so, if that.

13 Wayne, is that accurate?

14 MR. GOSNELL: Your Honor, this is Wayne Gosnell. That
15 was from approximately June of 2012 to August of 2012.

16 MS. KIRSHNER: All right. So it wasn't a very long
17 period of time. And then he retired.

18 THE COURT: So do I take it, from what you've said
19 before, that that incident is described as an attempted rape?

20 MS. KIRSHNER: No. No. No. No. No. It was sexual
21 abuse. It was not attempted rape. Sexual abuse under New York
22 state law.

23 In any event, during that post-unarrest period to the
24 time that he stopped practicing there was at least one -- one
25 complainant who indicated that she had been abused somehow and

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1 there was a nurse present in the room who gave a statement to
2 Columbia Presbyterian that nothing inappropriate had occurred;
3 she had been present the entire time.

4 As part of our preparation of the case, we subpoenaed
5 Dr. Hadden's personnel record, got this whole
6 multithousand-page file, and discovered this letter that was
7 the nurse's report in his personnel file.

8 As part of the district attorney's production to us,
9 they provided his personnel file but neglected to provide that
10 one page that said nothing happened; that the nurse had
11 completely undermined the version of the events by the woman
12 who had been -- who had been examined by him in that
13 post-unarrest period, that two-month period.

14 We had a number of court appearances where I
15 specifically asked the district attorney's office if *Brady*
16 material existed. And they repeatedly said it did not. And
17 then supervisors came down and asked whether or not *Brady*
18 material existed. Based on the line assistant, it did not.
19 And after Mr. Gosnell prepared a brilliant hundred-page
20 *Molineux* motion, we decided to engage in plea negotiations.

21 At that point the government was asking for four years
22 in custody. And after our discussion in which we pointed out
23 what appeared to be a deliberate attempt to hide this report,
24 the prosecution agreed to a nonincarceratory sentence and that
25 was how that worked. And so we resolved the case.

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1 THE COURT: There was a plea and what sentence?

2 MS. KIRSHNER: Conditional discharge, which is
3 basically a nonsupervised discharge from the Court.

4 THE COURT: That really is one of the issues that I
5 was interested in, if there were any conditions attached.

6 MS. KIRSHNER: Well, he still had to register as a sex
7 offender in New Jersey. He doesn't reside in New York. So he
8 still had to do that.

9 And a further condition was that he relinquish his
10 license, which he did. So he has not practiced since 2012 when
11 he retired but he relinquished his license I think in 2016
12 maybe was when that case was resolved.

13 Wayne, is that correct? Did we resolve it in 2016.

14 MR. GOSNELL: I believe that's correct.

15 And your Honor, as I explained, one other aspect is
16 that the plea covered all of the allegations of the alleged
17 victims who were contained within the indictment as well as all
18 allegations relating to anyone that the state prosecutor --
19 anyone that the state prosecutor alleged was a victim both in
20 the indictment as well as part of their *Molineux* or 404(b)
21 application and some other individuals -- essentially anyone
22 that they knew of at the time of the plea, the plea covered all
23 of those allegations.

24 THE COURT: Got it.

25 MS. LONERGAN: Your Honor, this is Jessica Lonergan.

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1 I'm happy to answer any questions the Court has about
2 this that we can shed my light on. But, first of all, we are
3 in possession of the state court transcripts for both the plea
4 and the sentencing proceeding and we're happy to provide those
5 to the court if that would be helpful.

6 THE COURT: I was -- just what I was getting to. Does
7 anybody have any objection to my reviewing -- I do think that
8 would be helpful. So I take it the government has no
9 objection.

10 MS. KIRSHNER: No. We have copies as well. And if
11 the Court wants them, the Court can have them, obviously. They
12 are public record.

13 MS. LONERGAN: Your Honor, this is Jessica Lonergan
14 again. I wanted to just slightly address one of the last
15 things that Mr. Gosnell said.

16 So what he said was that the state plea agreement, I
17 think the word he used was "covered" all of the victims who
18 were included in the indictment and any other victim that the
19 state prosecutors knew about at the time of the plea.

20 I don't know that I would have used the word
21 "covered." It is true that the plea agreement said that the
22 state could not bring additional charges based on any of the
23 victims who were in the indictment or any of the victims
24 about -- whom they knew about at the time of the plea.

25 However, those additional victims were not covered in

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1 the sense that they were relevant conduct that was considered
2 by the judge at sentencing.

3 The defendant pled guilty to two counts relating to
4 two different victims, so one count per victim. And he was
5 sentenced on each of those counts.

6 He was not sentenced from my review -- and again
7 Ms. Kirshner and Mr. Gosnell were part of that case, but from
8 our review of the sentencing transcript, he was not sentenced
9 on the entirety of the conduct known to the district attorney's
10 office at the time of sentencing, although the assistant
11 district attorney did mention, as part of sentencing, that
12 there were other victims and presented some of that information
13 to the state court.

14 So I just wanted to make sure that that was clear that
15 the defendant pled guilty just to two counts pertaining to two
16 victims.

17 MR. GOSNELL: Your Honor --

18 THE COURT: Hold on one second. I'll hear from
19 defense counsel in a minute. But I imagine that some of this
20 will be apparent when I review the transcripts.

21 But so, in any event, Jessica, if you could send those
22 over to me, I would appreciate them.

23 MS. LONERGAN: I can. And if the defense has no
24 objection, if it would be helpful for the Court, we would also
25 be able to provide the Court with the state court plea

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1 agreement. That's not a public document so that would be
2 something we would want the defense to consent to. But if the
3 defense consents just in terms of educating the Court, that's
4 another document we have and could provide.

5 THE COURT: OK.

6 MS. KIRSHNER: Just give us an opportunity to take a
7 look at it because I haven't seen it in a long time.

8 THE COURT: If you two, I think, are going to meet and
9 confer after today's proceeding, that's one of the issues that
10 you can talk about. And if the defense has an objection, I'll
11 just look at the transcripts. If they don't, I'll be happy to
12 look at the plea agreement.

13 MR. GOSNELL: Your Honor, this is Wayne Gosnell. Just
14 to sort of clarify what Ms. Lonergan was discussing.

15 In federal court, she's correct, that relevant
16 conduct -- if the Court is sort of considering all relevant
17 conduct, it's only considering what is before the Court. Plea
18 agreements and pleas in criminal cases work very differently in
19 state court.

20 Essentially what happened in this case and what
21 happens in most cases is that the prosecutors and the defense
22 come to an agreement and that is what the plea is to. Here, we
23 had a separate plea agreement in addition to the plea which
24 specifically mentioned that -- and I, in fact, have an e-mail
25 from the supervising prosecutor in this who makes clear that

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1 the plea and the sentence imposed upon Mr. Hadden by the Court
2 would be covering all crimes and incidents enumerated in the
3 *Molineux* agreement as well as an additional incident and he
4 would not be further prosecuted for any of those incidents.

5 The Court was well aware of that at the time of the
6 sentencing and, in fact, one of the issues that came up was, in
7 determining Mr. Hadden's level for the sex offender registry,
8 it was very clear that the Court was considering all of those
9 alleged incidents in determining what level sex offender
10 Mr. Hadden should be.

11 THE COURT: And what level was that?

12 MR. GOSNELL: He was the lowest level, I believe.

13 THE COURT: OK.

14 MR. GOSNELL: I apologize, your Honor. I can't
15 remember if that's three or one. Sometimes it works a little
16 differently.

17 MS. KIRSHNER: I think he was recommending one. I
18 just don't know what it translated to in New Jersey.

19 THE COURT: One is the lowest in New York and a three
20 would be the highest, I believe, in New York.

21 Well, we'll figure that out. You think it was the
22 lowest in New Jersey?

23 MS. KIRSHNER: I know it was the lowest in New York.

24 THE COURT: I mean in New York, yes.

25 MS. KIRSHNER: Right. I know it was the lowest in

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1 New York. What it translated to in New Jersey, I'm not sure.

2 THE COURT: So, is he -- is he a sex offender in both
3 New York and New Jersey? Is that your understanding?

4 MR. GOSNELL: I believe that's correct, your Honor.

5 THE COURT: Fair enough. All right. So what I would
6 like to do then, unless anybody wanted to add something to what
7 we've said up until now, I would like to go through the
8 conditions established by the magistrate judge, and maybe this
9 is something for pretrial to present and bring me up to date on
10 where those particular conditions stand. Are they in place?
11 Are they being adhered to? Are some not being adhered to or
12 not in place? One by one.

13 I think we've taken care of the bond for the moment by
14 saying that Mrs. Hadden is going to sign today and counsel is
15 going to send me a letter proposing that there be some
16 independent, so to speak, nonfamily signatories. But I guess
17 the request is going to be that the names not be public. And
18 if that is the request, which it sounds like it is, Isabelle,
19 if you could provide some support for the proposition that they
20 needn't be public, if that's your position.

21 MS. KIRSHNER: OK. Thank you, Judge.

22 THE COURT: Great. So I think, Christine, you said
23 that pretrial services was on the line as well.

24 THE DEPUTY CLERK: Yes, Judge, I did.

25 MR. MOSCATO: Yes, your Honor.

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1 THE COURT: Let me hear from pretrial services and go
2 one by one through the conditions established by the magistrate
3 judge as part of -- as part of Mr. Hadden's release.

4 MR. MOSCATO: Yes, your Honor. This is John Moscato
5 of the U.S. Pretrial Services.

6 So when bail was set Judge Lehrburger set the bond of
7 one million dollars to be cosigned by three financially
8 responsible persons, secured by the equity in the residence
9 located in New Jersey.

10 There's a condition that his travel be restricted to
11 the Southern and Eastern Districts of New York and the District
12 of New Jersey. And surrender all travel documents.

13 THE COURT: One second. Could I just stop you there.
14 Eastern District of New York is there for what reason? Is
15 there a reason that people want to include the Eastern District
16 as well? Or is it a travel issue or what?

17 MS. KIRSHNER: No. I think it was just sort of
18 standard conditions type of thing.

19 THE COURT: OK. I got it. Got it. Go ahead.

20 MR. MOSCATO: So I'll continue. So there's the
21 condition that his travel be -- I mean that he surrender his
22 travel documents and make no new applications.

23 He is subject to pretrial services supervision as
24 directed.

25 He has a condition --

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1 THE COURT: Hold on. Before you get to the next one.
2 So what is that in the real world, what does that mean in this
3 case? What kind of supervision are you providing?

4 MR. MOSCATO: In this case, your Honor, it's strict
5 supervision. So he's also required to remain in his home with
6 the condition of home detention which is enforced with GPS
7 monitoring at this time.

8 THE COURT: With certain exceptions for medical,
9 legal, religious, and shopping, as I recall?

10 MR. MOSCATO: That's correct. He has -- he will be
11 able to leave the house with preapproval from pretrial services
12 for those reasons, not specifically shopping, although that can
13 be arranged. But, if he were to have a -- you know, a medical
14 appointment or a legal appointment we would enter schedules for
15 that. And so far there hasn't been any issues with regard to him
16 being able to access pretrial services officer and to make
17 schedules as needed.

18 THE COURT: So that's already happened; that is to
19 say, when he has, in the last ten days, sought to leave, if he
20 has sought to leave, that condition has kicked in as it were
21 and you authorized or did not authorize a particular trip
22 outside the house?

23 MR. MOSCATO: So, your Honor, the case was transferred
24 to the Pretrial Services Office in the District of New Jersey
25 and there's an officer who is assigned the case there. So I

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1 don't know specifically if he has requested to leave in the
2 last ten days. But that office is in contact with us and there
3 haven't been any issues with regard to scheduling.

4 THE COURT: Would you, after this hearing, drop me a
5 note as to who that officer is and going forward perhaps we
6 could have that officer on a call like this if we have one, as
7 well as yourself.

8 MR. MOSCATO: Yes, your Honor. I will give you that
9 information.

10 THE COURT: OK. Go ahead. Next condition.

11 MR. MOSCATO: The next condition is mental health
12 evaluation and treatment as deemed necessary.

13 THE COURT: So that's one I have some concerns about.
14 In reading through the papers, it strikes me that mental health
15 issues have come up a couple of times both in the pretrial
16 services report and certainly it came up in the bail hearing as
17 well. The way I understood this -- first of all, I did
18 understand that it was in the discretion of pretrial services.
19 I have a little suggestion in that regard. I would like to see
20 the mental health be regularized and implemented on a weekly
21 basis and I'll tell you what I mean by that in a moment. So I
22 read in the papers that Mr. Hadden suffers from PTSD and
23 depression somewhat and there are medications prescribed and in
24 addition -- and so he has regular, I think, teleconferences
25 with a psychiatrist with respect to that aspect of his

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1 treatment.

2 There's also mention in there that he had -- maybe you
3 could -- you'll help me out. He had been in psychological or
4 therapy counseling in any event for some period of time and
5 that had been discontinued. And I was hoping that we make the
6 mandatory condition that it being weekly.

7 It seems to me for lots of reasons, both mentioned in
8 the pretrial services report, that there may be some mental
9 health issues here, that we implement that and not leave that
10 as a discretionary. It seems to me it is a positive thing
11 that -- a positive resource that should be put in place.

12 MS. KIRSHNER: Your Honor, just for the record. He
13 did speak with his therapist yesterday by phone.

14 THE COURT: Apart from the psychiatrist?

15 MS. KIRSHNER: Yes. Or psychologist. His therapist.

16 THE COURT: Great. And that's a licensed therapist in
17 New Jersey?

18 MS. KIRSHNER: Yes.

19 THE COURT: And do you all have any objection, I would
20 like to have that as a regular mandatory condition, weekly
21 counseling?

22 MS. KIRSHNER: I don't have any objection. Obviously,
23 COVID has made meeting with professionals somewhat a little
24 more difficult but I think everyone would benefit if he did
25 that, so.

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1 THE COURT: Great. And so pretrial services, you can
2 work that out or in coordination with the fellow from
3 New Jersey who is doing the active supervision; is that right?

4 MR. MOSCATO: Yes. That's right, your Honor. We
5 can -- I'll let the officer know to confirm his attendance in
6 treatment.

7 THE COURT: And we're making a modification to the
8 bail conditions, a slight one. I think that would be in
9 everybody's interests as well.

10 So, OK. Keep going. I think you're up to home
11 detention, perhaps.

12 MR. MOSCATO: Yes, your Honor. Home detention
13 enforced with GPS monitoring.

14 He is not to possess a firearm, destructive device or
15 any other dangerous weapon.

16 He is to have no contact with codefendants and/or
17 witnesses except in the presence of counsel.

18 And no unsupervised contact with minors.

19 THE COURT: OK. All those conditions were to be met
20 by 9/19. I guess all the conditions of bail were to be met by
21 then. If we can get over the issue of I guess anonymity of two
22 of the signatories for privacy reasons, if that can be
23 surmounted legally, we will make all the conditions by 9/19, I
24 think.

25 Is that right, Isabelle?

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1 MS. KIRSHNER: Well, Judge, I would like a few more
2 days on the issue of the sureties just to make sure we're all
3 in place if that's OK with the Court. I mean I know his wife
4 is available and I just don't know what anybody else's schedule
5 is given that we sort of ended our conversations fairly
6 quickly. I think the lead process has been a little delayed
7 because of COVID. We have counsel in New Jersey that's working
8 on it and just filing issues are difficult with the courts. So
9 we may have to ask the Court for a few more days on that.

10 THE COURT: OK. So when you send me that letter you
11 can make that request. I am eager to get this all set and in
12 place, so.

13 MS. KIRSHNER: No, I understand. But he is at home.
14 He is on home detention. He's got a bracelet on. He's not
15 going anywhere.

16 THE COURT: No, no, no. I get it. I get it. I just,
17 you know, I like to make sure that everything is in place, that
18 people either in the case of the magistrate judge direct it, or
19 I modify it, or you all agree, I like to get it set as quickly
20 as possible.

21 MS. KIRSHNER: I understand.

22 THE COURT: OK.

23 We went over this briefly before but he may leave
24 for -- I think this is what you all discussed in the bail
25 hearing -- meetings with lawyers, religious service attendance,

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1 medical appointments, and I said shopping before because I did
2 read in the transcript that he does the household shopping and
3 that was the primary other chore I guess or undertaking that he
4 is permitted to do.

5 Did I get that right, pretrial?

6 MR. MOSCATO: Yes, your Honor.

7 THE COURT: And then lastly was the installation of
8 GPS monitoring. And that is in place, I take it?

9 MR. MOSCATO: That's correct.

10 THE COURT: Great. All right. So, yep, if you could
11 get me, as I said before, the name of the person in New Jersey
12 who in addition to yourself is going to supervise the bail
13 conditions.

14 There was something else that was going to happen.
15 There was going to be a urine test. Has that happened?

16 MR. MOSCATO: Your Honor, I don't believe that has
17 happened. The New Jersey office, along with our office, has
18 suspended in-person drug testing except for certain purposes
19 but, your Honor, if you need I can contact the office to have
20 them arrange to have him drug tested.

21 THE COURT: That was in there and I think we should --
22 I think we should nail it down. So, yes, I would appreciate it
23 if you would talk to the person in New Jersey and get that
24 straightened out.

25 And let's see. I think that's pretty much what I have

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1 in mind.

2 I did have another question from -- and this is really
3 a question for the government. In reading the bail transcript,
4 I noticed that the government was seeking remand on the basis
5 of risk of flight but not on the basis of danger to the
6 community and I think you said something about at this time or
7 something like that.

8 What is the thinking there, that there may be a
9 submission based on danger to the community at some point, or
10 you're just reserving your rights, or just curious to know.

11 MS. LONERGAN: Yes, your Honor. This is Jessica
12 Lonergan.

13 As I think is clear, we have an ongoing investigation,
14 including the search of a number of electronic devices that
15 were seized from the defendant's home. And so if during that
16 search we uncover anything that changes the government's
17 position, then we would present that to the Court. But we have
18 no new information to present to the Court at this time.

19 THE COURT: I got you. OK.

20 MR. GOSNELL: Your Honor --

21 THE COURT: I'm sorry.

22 MR. GOSNELL: Sorry. This is Wayne Gosnell. I just
23 wanted to reiterated, since the government just mentioned that
24 they have ongoing searches of electronic devices that were
25 seized either from Mr. Hadden or from his home. We identified

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1 for the government in the last conference that we expect there
2 are a lot of privileged communications and privileged documents
3 that would be contained on any of his electronic devices that
4 specifically pertain to this case and these allegations since
5 the -- because of the underlying state case and because of the
6 ongoing civil cases that undoubtedly include some of the
7 alleged victims here and certainly touch on the subject
8 matters. So we let the government know that any sort of review
9 of any of those devices should include a conflict team and
10 should be done in consultation with us. I just wanted to
11 reiterate that since they just mentioned that they are
12 conducting searches at the moment.

13 MS. LONERGAN: Your Honor, this is Jessica Lonergan
14 again. Just to clarify. We are attuned to the privilege
15 issues. Our searches to date precisely for that reason have
16 been only images and videos so that we do not run into anything
17 potentially privileged. And we will work with defense counsel
18 to conduct a privilege review or a wall review.

19 What we'll need from defense counsel, but we're happy
20 to discuss with them further, is at the outset a list of names
21 and contact information for any lawyers who have represented
22 the defendant in any of their related proceedings so that we
23 can provide those names to a filter team to filter out that
24 correspondence.

25 MR. GOSNELL: Your Honor, the search of any files on

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1 the computer, whether they're video or image files, could be a
2 search of privileged documents if those images or video files
3 pertain to any of the cases that were provided in conjunction
4 with those cases. So I don't think that those searches are
5 appropriate at this time given that we haven't gone through any
6 sort of conflict review. So the government does that obviously
7 at their peril. But we certainly indicated on the first
8 conference, and we're reiterating it here, that any search of
9 any electronic devices should involve a conflict team and
10 should be done in consultation with us.

11 THE COURT: Well, so we don't have to resolve that at
12 this moment. It does relate to the last item I wanted to
13 mention which was or is the idea of a protective order and
14 discovery. Where does that stand? And perhaps the assistant
15 should answer that discussion.

16 MS. LONERGAN: Yes, your Honor. This is Jessica
17 Lonergan. We have already started engaging with defense
18 counsel in conversations about this very issue. We have sent
19 them a draft proposed protective order for their review and
20 comment. We're still waiting to get any -- to get their
21 feedback on that.

22 In light of the nature of the allegations and the
23 government's interest in protecting victims' privacy, and I
24 think as we communicated to defense counsel we're going to --
25 we're starting to prepare discovery but we're not going to be

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1 able to produce it until we resolve the issue of the protective
2 order.

3 But I imagine that that is something that at least at
4 this point we don't need the Court to intervene and we can
5 start by conferring and hopefully reach agreement and present
6 an agreed-upon protective order for the Court's consideration.

7 In terms of discovery, at a high level, the discovery
8 will consist in part of victim medical records, materials that
9 were seized during a search of the defendant's residence,
10 including, as I just mentioned, numerous electronic devices,
11 subpoena returns, documents from the New York City police
12 department and the district attorney's office related to the
13 prior arrest and prosecution of the defendant and telephone
14 records, among other things.

15 And the government would propose, in terms of timing,
16 30 days from the entry of the protective order for the bulk of
17 the discovery and then 90 days from that date to produce
18 responsive or identified materials from the searches, although
19 that -- it depends on, of course, the parties' discussions
20 about the privilege review and how quickly we can have those
21 discussions. And then as, again, as I mentioned before, the
22 investigation is ongoing. To the extent that that ongoing
23 investigation generates more discoverable material, the
24 government is, of course, aware that our discovery obligation
25 is also ongoing and will produce that material on a rolling

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1 basis as we obtain it. That is what the government would
2 propose in terms of a discovery schedule.

3 THE COURT: So before I hear from the defense, the
4 trigger is the protective order and you're sort of in the
5 process of discussing it, one with the other, one side and the
6 other.

7 MS. LONERGAN: That's correct, your Honor. We have,
8 as I said, have sent a proposed -- a draft proposed protective
9 order to the defense modeled after protective orders that we've
10 used in similar cases with similar types of charges; are
11 waiting to hear from them and can have a conversation with them
12 about any concerns they have and that hopefully, as I said,
13 can, within fairly short order, maybe within a week or so,
14 present to the Court an agreed-upon proposed order for the
15 Court's consideration.

16 THE COURT: OK. Sounds -- what is the defense's take
17 on that?

18 MS. KIRSHNER: My take is I'm about to tell you
19 something that's going to make you very unhappy.

20 THE COURT: Happy?

21 MS. KIRSHNER: Unhappy.

22 THE COURT: I'm a happy person, you know.

23 MS. KIRSHNER: I know and I hate to make you unhappy
24 because you're a nice man and I like to make you happy.

25 The one big if, and we have already discussed this

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1 with the government via e-mail, is that we have not been
2 formally retained by Mr. Hadden.

3 THE COURT: I saw that.

4 MS. KIRSHNER: We have jumped into the breach when he
5 was arrested. He notified the arresting officers that we were
6 his counsel and we took it upon ourselves to make sure that we
7 dealt with the bail issues and we made clear on the -- at the
8 time of the arraignment that we were appearing for those
9 purposes.

10 We hope to resolve that issue shortly but this is a
11 big case and it's a big undertaking and we're a small firm and
12 we need to make sure that our relationship in terms of
13 retention has been formalized. And so while we're prepared to
14 deal with bail issues for him because we understand there is
15 some timeliness; if he is unable -- if we are unable to
16 formalize our relationship it may be that other counsel needs
17 to be brought in here.

18 So we are working on all these issues simultaneously
19 with each other. We will certainly continue to work with the
20 government on the issue of bail today and try to deal with
21 that. But, I have told the government that I am reluctant to
22 get into any sort of substantive discussions with them until we
23 have been formally retained by Mr. Hadden.

24 THE COURT: So that's appropriate. And when do you
25 think that issue is going to be resolved one way or the other?

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1 MS. KIRSHNER: Based on our discussions this morning,
2 I believe within the next two weeks that should be resolved one
3 way or the other.

4 THE COURT: OK. And I take it you were suggesting
5 that I'd be unhappy if you didn't stay in the case; is that
6 right?

7 MS. KIRSHNER: No, I wasn't -- I don't know whether
8 you're going to be happy whether I'm in the case or not but the
9 government has a plan that seems to be efficient and
10 streamlined and probably one that we would be willing to go
11 along with but I'm going to just make a little, you know, hole
12 in the road here and cause a little bit of a delay. That's
13 all.

14 THE COURT: I got you. I think -- because I did see
15 in the proceeding before the magistrate judge that that -- I
16 think that's what I saw, that that issue was an open issue.

17 I encourage you to, and your client, to resolve it as
18 quickly as possible because otherwise it's just going to slow
19 things down.

20 So would you let me know as soon as that determination
21 is made as to whether you're going to remain in the case or not
22 and are you suggesting, Isabelle, that if you are in --
23 sometimes there are, you know, more than one set of people in a
24 case like this in any event. So is that a possibility as well
25 or would it be that --

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1 MS. KIRSHNER: I'm sorry. More than one set, you mean
2 another set of lawyers?

3 THE COURT: Yes.

4 MS. KIRSHNER: No. I mean it's just a question of
5 getting us into the case. And you'll know that when we file a
6 notice of appearance. And if it appears that we're not going
7 to be able to come to terms with Mr. Hadden about entering the
8 case, I will certainly let the Court know that immediately.

9 THE COURT: So your point is that if you are retained
10 it will just be the current lawyers.

11 MS. KIRSHNER: Yes.

12 THE COURT: Although, you know, you have every right
13 to add counsel if you wish down the road. But essentially you
14 will be Mr. Hadden's counsel through this matter.

15 MS. KIRSHNER: That's the current plan.

16 THE COURT: And did you have any reaction to the
17 government's timeframe; that is to say, this 30 days, 90 days
18 from the date of a protective order?

19 MS. KIRSHNER: Again, Judge, I think it would be
20 inappropriate for us to opine on that without being his
21 lawyers.

22 THE COURT: I got it. I got it. OK.

23 MS. LONERGAN: Your Honor, this is Jessica Lonergan.

24 I would propose, once the counsel issue is worked out,
25 the government can confer with whoever is going to be defense

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1 counsel and hopefully we can just submit a joint proposed
2 letter setting out a joint proposal for a discovery schedule
3 for the Court's consideration and that way we could --
4 hopefully that would be efficient and we don't have to appear
5 in front of the Court again. And, of course, if we can't agree
6 on a schedule, then that's a different thing. But I hope
7 everyone -- it seems like everyone -- we'll all proceed
8 reasonably and hopefully we can agree on a schedule that we
9 will then propose to the Court.

10 THE COURT: I get it.

11 MS. KIRSHNER: That sounds perfectly reasonable,
12 Judge.

13 THE COURT: So what -- the last thing is what is an
14 appropriate date for us to get together again on the issues
15 that I've asked that there be some action taken, those can be
16 resolved by correspondence to the Court. For example, that
17 counseling is in place weekly or whatever -- whatever else
18 we've discussed. When do you think -- or what is a good time
19 for us to schedule the next conference?

20 MS. KIRSHNER: Well, Judge if what we're just going to
21 do is inform you of whether we're in or we're out we can do
22 that in the next -- you know, in two weeks or so.

23 If you want to proceed and someone else -- look, I
24 guess the one thing I'm considering is that if for some reason
25 we're unable to be retained and Mr. Hadden requires appointed

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1 counsel, I guess he needs to come back before the Court for
2 that, so.

3 THE COURT: Yes. So why don't I set a tentative
4 conference and we can vacate it or not as needed but for
5 about -- between two and three weeks? How about that? And
6 we'll either know that you're in, in which case you might --
7 both sides might ask to vacate the conference and substitute
8 another date or if you're out we'll have the conference and
9 endeavor to resolve counsel issues.

10 MS. KIRSHNER: Right.

11 THE COURT: Fair?

12 MS. KIRSHNER: Yes. I think that makes sense.

13 THE COURT: What do we have for two to three weeks
14 out?

15 MS. LONERGAN: That's fine for the government, your
16 Honor.

17 THE COURT: OK.

18 MS. KIRSHNER: That's fine.

19 THE COURT: Good.

20 THE DEPUTY CLERK: Judge, this is Christine. Would
21 you like me to propose a date?

22 THE COURT: Yes.

23 THE DEPUTY CLERK: How is Thursday, October 22 at
24 9 a.m.?

25 THE COURT: Does that work for both sides? It works

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1 for me.

2 MS. KIRSHNER: That's fine, Judge. And I suppose you
3 have no idea whether that's in person or virtual.

4 THE COURT: I'm inclined to think that it's going to
5 be virtual and I don't know what your experience is and the
6 government's, for that matter, in SDNY for this last quarter of
7 the year but my sense is that there will be some trials first
8 on an initial basis to see how the system compatibility with
9 COVID is to be implemented. Beyond that, I'm thinking that at
10 least on any docket most things will be virtual and
11 teleconference in this fashion if that's OK with everyone.

12 By the way, you raise a good point. We should get
13 your feeling for whether today's conference, for example, is
14 acceptable even though it is not in person and even though it's
15 not in an SDNY courtroom. But given the fact and the
16 conditions brought about by the COVID pandemic, this is really
17 the safest and from my point of view the wisest choice,
18 especially since we're really doing scheduling and
19 administrative matters, to proceed by teleconference, AT&T
20 teleconference.

21 Isabelle, is that OK with you and --

22 MS. KIRSHNER: I'm in full agreement with the Court,
23 Judge. And we waive Mr. Hadden's appearance.

24 THE COURT: And how about the government?

25 MS. LONERGAN: Yes, your Honor. That is fine. We

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1 were actually going to bring it up with you.

2 Two very quick matters.

3 Was the date that your deputy proposed, was that
4 October 22 at 9 a.m.?

5 THE COURT: Yes.

6 MS. LONERGAN: Your Honor, we are, of course,
7 available as we always are but one of us has a scheduling
8 conflict and so if the Court is amenable would it be possible
9 to do even the day before or the day after? If not, we will
10 proceed as scheduled by the Court.

11 THE COURT: I think we can probably accommodate
12 October 21. Let's see.

13 THE DEPUTY CLERK: Judge, the only time we have
14 available on October 21 is 12:30.

15 THE COURT: Does that work for you? Does that solve
16 the problem and is that agreeable to everybody?

17 MS. LONERGAN: It does for the government, your Honor.

18 MS. KIRSHNER: It's fine with us, Judge.

19 THE COURT: OK. So we're saying October 21 at 12:30.
20 And is there an issue or an application under the Speedy Trial
21 Act that takes us to that date?

22 MS. LONERGAN: Yes, your Honor. The government moves
23 to exclude time under the Speedy Trial Act between today and
24 October 21 to allow the defendant to workout his -- who will be
25 representing him during this case, in addition to allow the

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1 parties to confer regarding the production of discovery, and to
2 begin discussing, if possible, any pretrial dispositions.

3 MS. KIRSHNER: No objection.

4 THE COURT: And I'm going to find also under 18 U.S.C.
5 § 3161 that the request for adjournment joined in by both sides
6 to and including October 21 is appropriate and warrants
7 exclusion of the adjourned time from speedy trial calculations.

8 I further find that the exclusion is designed to
9 prevent any possible miscarriage of justice, to facilitate
10 these proceedings, including these important preliminary issues
11 having to do with representation and preliminary organization
12 of discovery and also to guarantee effective representation of
13 and preparation by counsel for both sides. And thus, the need
14 for exclusion and the ends of justice outweigh the interests of
15 the public and the defendant in a speedy trial pursuant to
16 18 U.S.C. § 3161(h)(7)(A)(B).

17 And then just one small point. Ms. Kirshner, I think
18 you mentioned -- maybe you misspoke. Mr. Hadden is on this
19 call; isn't that correct?

20 MS. KIRSHNER: Yes, he is.

21 THE COURT: I thought it came out that you said you
22 waive his appearance. I think you mean --

23 MS. KIRSHNER: I meant his in-person appearance.

24 THE COURT: OK. I got it. So anybody want to add
25 anything from the government's side?

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1 MS. LONERGAN: Nothing else from the government, your
2 Honor. Thank you so much.

3 THE COURT: And how about from the defense?

4 MS. KIRSHNER: No, your Honor. Thank you. And we'll
5 be speaking with the government this afternoon.

6 THE COURT: That's just great. I know you'll probably
7 be able to clear a lot away if you do meet and confer and I
8 would appreciate that, if that comes about.

9 So I'll see you all on the 21st of October. Thanks.

10 (Adjourned)
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